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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re
PG&E CORPORATION,
- and -
PACIFIC GAS AND ELI
COMPANY,
Debtors.

16 [] Affects PG&E Corporation
17 [x] Affects Pacific Gas and Electric Company
17 [] Affects Both

18 *All papers shall be filed in the Lead Case
No. 19-30088

Case No. 3:19-bk-30088-(DM)

Chapter 11 (Lead Case Jointly Administered)

**SCOTT AND CHARLYSE RAVEN'S
MOTION FROM AND/OR
MODIFICATION OF THE PLAN
INJUNCTION AND/OR FOR
ABSTENTION AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: November 30, 2022

Date: November
Time: 10:00 a.m.

Time: 10:00 a.m.
Place: Ct. Rm. 17
United States Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

Hearing will be conducted telephonically or by video

Judge: Honorable Dennis Montali

Scott Raven and Charlyse Raven (“Movants”) hereby move for relief from the plan injunction and/or for abstention (the “Motion”) in order to allow Movants to proceed with liquidating their claim against Pacific Gas and Electric Company (“PG&E”) in the Monterey County Superior Court after unsuccessfully participating in this Court’s ADR procedures for general claims on May 19, 2022. Pursuant to Local Rule 4001-1(a), respondent may appear by counsel at the

1 preliminary hearing. Movants represent the following:

2 **I. JURISDICTION**

3 1. This Court has jurisdiction to hear and determine this Motion pursuant to 28 U.S.C.
4 § 1334, 157 and 11 U.S.C. §§ 362 and 524. The relief requested in the Motion is a core proceeding
5 pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
6 Movants consent to the bankruptcy court's authority to issue final orders or judgments in this matter
7 pursuant to 28 U.S.C. § 157(c)(2).

8 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

9 2. Movants are engaged in the commercial production of livestock and own a cattle
10 ranch located at 4725 Vineyard Canyon road, approximately three miles northeast of the town of
11 San Miguel, California (the "Raven Ranch"). *Declaration of Scott Raven in Support of Motion for*
12 *Relief From Plan Injunction And/Or Abstention ("Raven decl."), ¶ 3.* The Raven Ranch is
13 comprised of approximately 3,4446 acres in San Luis Obispo and Monterey Counties. *Id.* The
14 Movants also lease an additional approximate 160 acres. *Id.* The Raven Ranch contained an
15 extensive fencing system, dividing the ranch into six different pastures with associated roadways
16 and stock watering systems, allowing the ranch to use a rotational grazing system for the herd. *Id.*

17 3. Jennifer Hodges ("Hodges") was the owner of approximately 931 acres located at
18 77820 Vineyard Canyon Road, land which is roughly across the street from the Raven Ranch (the
19 "Hodges Property"). *Id.*, at ¶ 4. The Hodges Property includes an equestrian riding arena with an
20 elevated lighting system. *Id.*

21 4. PG&E and/or its contractor, Hot Line Construction, Inc. ("Hot Line"), constructed,
22 modified, and/or maintained an electrical powerline and associated equipment on the Hodges
23 Property and in close proximity to a light pole that was part of the equestrian riding arena located
24 on the Hodges Property. *Id.*, at ¶ 5.

25 5. Due to wind, the powerline and lighting fixture came into contact and ignited a fire
26 on July 8, 2017. *Id.*, at ¶ 6. The blaze grew into what was to be known as the Parkfield Fire. *Id.*
27 The fire spread to the surrounding properties, including the Raven Ranch. *Id.* Over roughly half of
28 Raven Ranch was burned, including two pastures totaling 1680 acres of forage that was reserved to

1 feed the Movants' herd during the late summer and fall. *Id.* Seven miles of fencing, stock watering
2 systems, and shade structures were lost, one cow was destroyed and the road system was damaged.
3 *Id.* The fire burned to the exterior wall of the Movants' residence, destroying portions of the yard,
4 irrigation system, entry gate, domestic water well, and causing extensive smoke damage to the
5 Movants' residence. *Id.*

6 6. On January 18, 2018, Movants filed their lawsuit against PG&E, Hodges and Hot
7 Line in Monterey County Superior Court, Case No. 18CV00258, asserting causes of action arising
8 from the Parkfield Fire for trespass, negligence, negligence interference with economic relations,
9 inverse condemnation (the "State Court Action"). *Id.*, at ¶ 7. Movants filed a second amended
10 complaint on July 26, 2018. *Id.* A true and correct copy of the second amended complaint is
11 attached as Exhibit A to the Raven decl. Movants have requested a jury trial. *Id.*

12 7. PG&E filed its Voluntary Chapter 11 Bankruptcy Petition (the "Petition") on January
13 29, 2019 in the United States Bankruptcy Court for the Northern District of California. *Id.*, at ¶ 8.

14 8. On August 28, 2019, Movants electronically filed their proof of claim in the PG&E
15 bankruptcy case as a general unsecured claim in the amount of \$8,000,000 (the "Claim"). *Id.*, at
16 ¶ 9.

17 9. On June 20, 2020, the Court entered an order confirming the Debtors' and
18 Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 (the
19 "Confirmation Order"). [Doc 8053]. The Effective Date of the Plan occurred on July 1, 2020.

20 10. On September 25, 2020, the Court entered the Order Approving ADR and Related
21 Procedures for Resolving General Claims (the "General Claims ADR Procedures Order") [Doc
22 9148]. The General Claims ADR Procedures Order approved "General Claims Procedures" (as
23 defined therein) that allow: (i) General Claimants (i.e., holders of Claims other than Fire Victim
24 Claims, Subrogation Wildfire Claims, or Securities Claims to submit, by mail or via a secure online
25 portal, information necessary to allow the Reorganized Debtors to evaluate their Claims and develop
26 settlement proposal for General Claimants; and (ii) the parties to exchange settlement offers or
27 engage in standard or abbreviated forms of mediation to resolve General Claims.

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1 11. In accordance with the General Claims Procedures, Movants submitted their
2 response to PG&E's Information Questionnaire, and Movants received a "Notice of Standard
3 Mediation," wherein Movants and Hot Line were notified that they were required to attend non-
4 binding mediation relating to the Claim. *Id.*, at ¶ 10.

5 12. On May 19, 2022, PG&E, Hot Line and Movants participated in mediation before
6 Judge Patrick J. O'Hara (Ret.) via Zoom. *Id.*, at ¶ 11. Hodges did not participate since she sought
7 relief under the Bankruptcy Code as noted supra. *Id.* Unfortunately, the mediation did not result in
8 resolution of the Claim. *Id.*

9 13. Under Section 7.1 of the Plan, PG&E had 180 days from the Plan Effective date to
10 serve and file objections to claims. [Doc 8053]. The Plan provided, however, for extensions of this
11 period for cause shown. *Id.* There have been several extensions of this period over the past two
12 years. At the present time, the Court's Order Further Extending Deadline for the Reorganized
13 Debtors to Object to Claims and Granting Related Relief dated May 19, 2022, extends the deadline
14 for PG&E to serve and file objections to claims under Section 7.1 of the Plan for an additional 180
15 days through and including December 19, 2022, without prejudice to the Reorganized Debtors' right
16 to seek additional extensions therefor. [Doc 12432].

17 14. As of the date of this filing, Movants are not aware of any objection by the
18 Reorganized Debtors to their Claim. *Id.*, at ¶ 12.

19 **III. LEGAL STANDARD**

20 15. A bankruptcy court can exercise discretion and abstain from hearing a particular
21 proceeding arising under title 11, or arising in or related to a case under title 11, in the interest of
22 justice, or in the interest of comity with State courts or respect for State law. *See* 28 U.S.C.
23 § 1334(c)(1); *see also* *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *In re*
24 *Middlesex Power Equipment and Marine*, 292 F.3d 61, 68 (1st Cir. 2002).

25 16. Courts apply the same principles that apply to motion for relief from stay when
26 considering whether there is cause to modify a plan injunction. *See, e.g., In re SquareTwo Fin.*
27 *Servs. Corp.*, 17-10659 (JLG), 2017 WL 4012818, at *1 (Bankr. S.D.N.Y. Sept. 11, 2017); *see also*,
28 11 U.S.C. § 362(d) (bankruptcy court "shall grant relief from stay" upon showing of "cause.").

1 17. “Cause” has no clear definition and is determined on a case-by-case basis. *Tucson*
2 *Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990) (citation omitted). Granting or denying relief
3 from stay is a matter of the court’s discretion and often involves consideration numerous factors. *In*
4 *re Curtis*, 40 B.R. 795, 799 (Bankr. D. Utah 1984); *In re Kronemyer*, 405 B.R. 915, 921 (9th Cir.
5 BAP 2009). The Ninth Circuit in *Tucson Estates* set forth the following factors for a bankruptcy
6 court to consider when deciding whether to abstain from exercising jurisdiction:

- 7 a. the effect or lack thereof on the efficient administration of the estate if a Court
8 recommends abstention;
- 9 b. the extent to which state law issues predominate over bankruptcy issues;
- 10 c. the difficulty or unsettled nature of the applicable law;
- 11 d. the presence of a related proceeding commenced in state court or other
12 nonbankruptcy court;
- 13 e. the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- 14 f. the degree of relatedness or remoteness of the proceeding with the main
15 bankruptcy case;
- 16 g. the substance rather than form of an asserted “core” proceeding;
- 17 h. the feasibility of severing state law claims from core bankruptcy matters to
18 allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 19 i. the burden of [the bankruptcy court’s] docket;
- 20 j. the likelihood that the commencement of the proceeding in bankruptcy court
21 involves forum shopping by one of the parties;
- 22 k. the existence of a right to a jury trial; and
- 23 l. the presence in the proceeding of nondebtor parties.

24 *Tucson Estates*, 912 F.2d at 1166-67 (quoting *In re Republic Reader’s Serv., Inc.*, 81 B.R. 422, 429
25 (Bankr. S.D. Tex. 1987)).

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1 18. Bankruptcy courts regularly grant relief from stay to permit litigation to be concluded
2 in another forum, particularly if the nonbankruptcy suit involves multiple parties or is ready for trial.
3 See, *In re Castlerock Properties*, 781 F.2d 159 (9th Cir. 1986) and *Packerland Packing Co., Inc. v.*
4 *Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985).

5 19. “Where a bankruptcy court may abstain from deciding issues in favor of an imminent
6 state court trial involving the same issues, cause may exist for lifting the stay as to the state court
7 trial.” *Tucson Estates*, 912 F.2d at 1166. Moreover, the legislative history of 11 U.S.C. § 362(d)(1)
8 states that “a desire to permit an action to proceed to completion in another tribunal may provide []
9 cause” for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. &
10 Admin. News 5787, 630.

11 20. According to the court in *Curtis*, “[t]he most important factor in determining whether
12 to grant relief from the automatic stay to permit litigation against the debtor in another forum is the
13 effect of such litigation on the administration of the estate.” *In re Curtis*, 40 B.R. at 806. Courts in
14 the Ninth Circuit have granted relief from the stay under § 362(d)(1) when necessary to permit
15 pending litigation to be concluded in another forum “if the non-bankruptcy suit involves multiple
16 parties or is ready for trial.” *Plumberex*, 311 B.R. at 556.

17 **IV. ARGUMENT**

18 21. The following Tucson Estates factors weigh in favor of permissive abstention and
19 establish “cause” for the granting of relief from stay to proceed with the State Court Action:

20 a. Effect on Administration of the Estate if Court Abstains: Granting relief from
21 stay to permit the State Court Action to liquidate Movants’ claims against the PG&E, Hot Line and
22 Hodges will permit Movant’s claim against the PG&E to be liquidated. Abstention therefore would
23 facilitate the administration of the estate. This factor weighs in favor of permissive abstention.

24 b. Extent to Which State Law Issues Predominate: All of Movants’ claims
25 against PG&E, Hot Line and Hodges are based on State law (e.g., Trespass, Nuisance, Negligence
26 and Negligent Interference with Prospective Economic Advantage). This factor weighs in favor of
27 permissive abstention.

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1 c. Difficulty or Unsettled Nature of Applicable Law: The State law underlying
2 the claims in the State Court Action is not particularly unsettled or difficult. This factor weighs
3 against favor permissive abstention.

4 d. Presence of Pending Related Proceeding: The State Court Action has been
5 pending in the Monterey County Superior Court since January 18, 2018. While expert witness
6 reports have been prepared, discovery has not been completed. This factor weighs in favor of
7 permissive abstention or is neutral..

8 e. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for
9 jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.

10 f. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy
11 Case: Resolution of the State Court Action would liquidate Movant's claim against PG&E, PG&E's
12 indemnity claim against Hot Line, Hot Line's cross-claim against Hodges and Hodges cross-claims
13 against PG&E and Hot Line (once Movants obtain relief from stay in the Hodges bankruptcy case).
14 This factor weighs in favor of permissive abstention.

15 g. Substance of the Asserted Core Proceeding: Movants have filed their Claim
16 and, therefore, the Court has "core" jurisdiction to resolve the Claim under 28 U.S.C. § 157(b)(2)(B).
17 This factor weights against permissive abstention.

18 h. Feasibility of Severing State Claims from Core Bankruptcy Matters: Since
19 Movants have filed their Claim, The Court has "core" jurisdiction and, therefore, this factor is
20 inapplicable.

21 i. Burden of Bankruptcy Court's Docket: Lifting the automatic stay to permit
22 the State Court to liquidate the Movants' Claims and the cross claims by and against PG&E and
23 non-Debtor parties would likely eliminate this Court having to liquidate claims against and on behalf
24 of the Debtor and claims against and on behalf of non-debtor third parties over which the Court does
25 not have jurisdiction. This factor weights in favor of permissive abstention.

26 j. Likelihood of Forum Shopping: This factor is inapplicable.

27 k. Existence of Right to Jury Trial: All parties have requested a jury trial. This
28 factor weighs in favor of permissive abstention since the Court cannot conduct a jury trial over the

1 objection of the non-Debtor parties, even if the filing of the Claim by Movants has resulted in the
2 waiver its right to a jury trial. *Langenkamp v. Culp*, 498 U.S. 42, 111 S.Ct. 330, 112 L.Ed. 2d 343
3 (1990). This factor weights in favor of permissive abstention.

4 1. Presence of Non-Debtor Parties in Related Proceedings: There are two non-
5 debtor defendants named in the State Court Action, Top Line and Hodges. This factor weighs in
6 favor of permissive abstention.

7 22. On balance, the Tucson Estates factors favor discretionary abstention.

8 **V. CONCLUSION**

9 Based on the forgoing and for good cause, Movants respectfully request this Court enter an
10 order: (a) granting relief from PG&E's plan injunction so that it can resume liquidating its claims
11 against PG&E, Hot Line and Hodges in the Monterey County Superior Court, but not enforce the
12 Claim against PG&E other than accepting the treatment proposed by the PG&E Plan and/or any
13 recovery from PG&E's insurance carrier(s).

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15 Dated: October 11, 2022

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By:



Hagop T. Bedoyan

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